IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3547 OF 2006

In

SUIT NO.1892 OF 1984

Balwant P. Upadhyay & Ors. : Plaintiffs

V/s.

The Municipal Corporation of Greater Bombay & Ors. : Defendants

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Mr.Swapnil Bangur i/b. Mr.G.S. Manasawala for the plaintiffs.

Mr.R.Y. Shirsikar for defendant nos.1 & 2.

Mr.A. Bagla i/b. M/s. Bagla & Dandekar for defendant no.3.

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**CORAM : S.A.BOBDE, J.**

DATE : FEBRUARY 20, 2007.

**P.C**.

1. This is a plaintiffs' Notice of Motion. By this Notice of Motion, the plaintiffs pray for setting aside the order dated 6.2.2004 dismissing the plaintiffs' suit in default of appearance.

2. The main reason given by the plaintiffs in the affidavit-in-support is that the matter could not be

attended to because of the demise of their Advocate Mr.M.K.Chehria and as a result of which, it was not known that the matter had been dismissed in default. Normally, such a reason would have weighed with the Court for setting aside the order of dismissal. However, it is pointed out on behalf of the defendants that the plaintiffs have suppressed the fact that they had engaged another Advocate by name Mr.R.C.Shroff and there is no mention of that in the affidavit-in-support. Moreover, the defendants have also pointed out that the statement on behalf of the plaintiffs that they signed Vakalatnama in favour of Advocate Mr.Arunkumar Singh after 12.3.2004 is not correct since they had already signed the Vakalatnama on 30.1.2004 in favour of that Advocate. The rejoinder on behalf of the plaintiffs is most unsatisfactory. Admittedly, the said Advocate Mr.R.C.Shroff was engaged after the earlier Advocate Mr.Chehria had expired and that has a direct bearing on whether anybody was responsible for attending the matter. Moreover, there is no satisfactory response to the signing of Vakalatnama in favour of Mr.Arunkumar Singh. It is clear that the plaintiffs have attempted to take undue advantage of suppression of material facts.

3. Even otherwise, it is pointed out on behalf of the defendants that the plaintiffs were grossly negligent in

that they have taken out Notices of Motion earlier for setting aside the dismissal and two of the Notices of Motion were dismissed for default and the third one was allowed to be withdrawn. This is the fourth Notice of Motion. This shows a negligent attitude. For the reasons stated above, the application for setting aside the order dismissing the plaintiffs' suit does not appear to be bona fide.

4. The Notice of Motion is, therefore, dismissed.

S.A. BOBDE, J.